

UNITED STATES OF AMERICA)

v.)

Manning, Bradley E.)
PFC, U.S. Army,)
HHC, U.S. Army Garrison,)
Joint Base Myer-Henderson Hall)
Fort Myer, Virginia 22211)

Draft
Case Calendar
Update

16 April 2012

1. The Court is currently scheduling Article 39(a) sessions with the following default schedule at the request of the parties: two weeks for parties to file motions; two weeks for parties to file responses; five days for parties to file replies; and one week for the Court to review all pleadings before the start of the motions hearing. The time for filing replies was added after the first Article 39(a) session on 15-16 March 2012 because the Court received reply briefs the day before that session, the parties desire to continue to file replies, and the Court requires time to consider them.

a. Phase 1. Immediate Action (21 February 2012 - 16 March 2012)

b. Phase 2(a). Legal Motions excluding Evidentiary Issues (29 March 2012 - 26 April 2012)

(1) **Defense Motion to Dismiss all Charges and their Specifications with Prejudice**

- (A) Filing: 15 March 2012 (filed early)
- (B) Response: 12 April 2012
- (C) Reply: 17 April 2012
- (D) Article 39(a): 24-26 April 2012

(2) **Government Motion for Appropriate Relief to Preclude Actual Harm or Damage from the Merits Portion of Trial**

- (A) Filing: 29 March 2012
- (B) Response: 12 April 2012
- (C) Reply: 17 April 2012
- (D) Article 39(a): 24-26 April 2012

(3) **Defense Motion to Dismiss Article 104 Offense**

- (A) Filing: 29 March 2012
- (B) Response: 12 April 2012
- (C) Reply: 17 April 2012
- (D) Article 39(a): 24-26 April 2012

(4) **Defense Motion to Dismiss Specification 1 of Charge II**

- (A) Filing: 29 March 2012
- (B) Response: 12 April 2012
- (C) Reply: 17 April 2012
- (D) Article 39(a): 24-26 April 2012

- (5) **Defense Unreasonable Multiplication of Charges Motion**
 - (A) Filing: 29 March 2012
 - (B) Response: 12 April 2012
 - (C) Reply: 17 April 2012
 - (D) Article 39(a): 24-26 April 2012
- (6) **Defense Renewal for Motion to Compel Discovery of Computers**
 - (A) Filing: 29 March 2012
 - (B) Response: 12 April 2012
 - (C) Reply: 17 April 2012
 - (D) Article 39(a): 24-26 April 2012
- (7) **Defense Renewal for Bill of Particulars**
 - (A) Filing: 6 April 2012
 - (B) Response: 17 April 2012
 - (C) Reply: N/A
 - (D) Article 39(a): 24-26 April 2012
- (8) **Reciprocal Discovery Requests**
 - (A) Filing: 29 March 2012
 - (B) Response: 12 April 2012
- (9) **MRE 404(b) Disclosures**
 - (A) Filing: 6 April 2012
- (10) **Updated Proposed Case Calendar**
 - (A) Filing: 12 April 2012
 - (B) Response: 17 April 2012
 - (C) Reply: N/A
 - (D) Article 39(a): 24-26 April 2012
- (11) **Results of Hard Drive Searches to Defense in Response to Defense Motion to Compel Discovery #1**
 - (A) Date: 20 April 2012
- (12) **Government Notification to Court Whether Relevant Files Exist with DOS, FBI, DIA, ONCIX, and CIA**
 - (A) Filing: 20 April 2012
- (13) **Government Notification to Court of Whether it Anticipates Limited Disclosure or Claim of Privilege, based on (12) above**
 - (A) Filing: 20 April 2012
- (14) **Protective Order – Defense Publication of Its Motions**

(A) 29 March 2012/2 April 2012/12 April 2012/17 April 12 – defense notifications and redactions

(B) 17 April 2012/19 April 2012 – Government Objections and Motions for Protective Order

(C) 20 April 2012 – Defense Replies

(15) **Defense Motion to Reconsider Compel Discovery – Grand Jury** (unscheduled)

c. **Phase 2(b). Legal Motions, excluding Evidentiary Issues (10 May 2012 - 8 June 2012)**

(1) **Defense Motion to Dismiss All Charged Offenses under 18 U.S.C. 793(e)**

(A) Filing: 10 May 2012

(B) Response: 24 May 2012

(C) Reply: 30 May 2012

(D) Article 39(a): 6-8 June 2012

(2) **Defense Motion to Dismiss All Charged Offenses under 18 U.S.C. 1030(a)(1)**

(A) Filing: 10 May 2012

(B) Response: 24 May 2012

(C) Reply: 30 May 2012

(D) Article 39(a): 6-8 June 2012

(3) **Government Motion for Proposed Lesser Included Offenses**

(A) Filing: 10 May 2012

(B) Response: 24 May 2012

(C) Reply: 30 May 2012

(D) Article 39(a): 6-8 June 2012

(4) **Defense Proposed Lesser Included Offense Instructions**

(A) Filing: 10 May 2012

(B) Response: 24 May 2012

(C) Reply: 30 May 2012

(D) Article 39(a): 6-8 June 2012

(5) **Defense Motion to Exclude Uncharged Misconduct (MRE 404(b))**

(A) Filing: 10 May 2012

(B) Response: 24 May 2012

(C) Reply: 30 May 2012

(D) Article 39(a): 6-8 June 2012

(6) **Updated Proposed Case Calendar**

(A) Filing: 10 May 2012

(B) Response: 24 May 2012

(C) Reply: 30 May 2012

(D) Article 39(a): 6-8 June 2012

(7) Disclosure of Unclassified Results of 3 Damage Assessment Searches to Defense in Response to the Court's Ruling, 30 March 2012

(A) Filing: 18 May 2012

(8) Disclosure under RCM 701(g)(2) or MRE 505(g)(2) of all Information (Unclassified and Classified) to the Court in Response to the Court's Ruling, 30 March 2012

(A) Filing: 18 May 2012

(9) Government Filing for In Camera Proceeding IAW MRE 505(i) with Notice to Defense (if Privilege is Claimed) in Response to the Court's Ruling, 30 March 2012

(A) Filing: 18 May 2012

(B) Response: 31 May 2012

(C) Reply: N/A

(D) Article 39(a): 6-8 June 2012

(10) Witness Lists Exchanged (Based on Discovery Received)

(A) Filing: 18 May 2012

(B) Government Objections: 24 May 2012

(C) Reply: 31 May 2012

(D) Article 39(a): 6-8 June 2012

(11) Production of Compelled Discovery #1 – Classified and Unclassified.

(A) 13 July 2012

d. Phase 3. Evidentiary Issues *not* Involving Classified Information under MRE 505 (22 June 2012 - 20 July 2012)

(1) Defense Motion to Compel Discovery #2

(A) Filing: 22 June 2012

(B) Response: 6 July 2012

(C) Reply: 11 July 2012

(D) Article 39(a): 18-20 July 2012

(2) Government Motion to Compel Discovery

(A) Filing: 22 June 2012

(B) Response: 6 July 2012

(C) Reply: 11 July 2012

(D) Article 39(a): 18-20 July 2012

(3) Motions *in Limine* (Evidence Discovered to Date)

(A) Filing: 22 June 2012

(B) Response: 6 July 2012

(C) Reply: 11 July 2012

(D) Article 39(a): 18-20 July 2012

- (4) **Motions to Suppress**
 - (A) Filing: 22 June 2012
 - (B) Response: 6 July 2012
 - (C) Reply: 11 July 2012
 - (D) Article 39(a): 18-20 July 2012
- (5) **Pre-Authenticate/Pre-Admit Evidence**
 - (A) Filing: 22 June 2012
 - (B) Response: 6 July 2012
 - (C) Reply: 11 July 2012
 - (D) Article 39(a): 18-20 July 2012
- (6) **Requests for Judicial Notice**
 - (A) Filing: 22 June 2012
 - (B) Response: 6 July 2012
 - (C) Reply: 11 July 2012
 - (D) Article 39(a): 18-20 July 2012
- (7) **Privileges**
 - (A) Filing: 22 June 2012
 - (B) Response: 6 July 2012
 - (C) Reply: 11 July 2012
 - (D) Article 39(a): 18-20 July 2012
- (8) **Proposed Members Instructions for all Charged Offenses**
 - (A) Filing: 22 June 2012¹
 - (B) Response: 6 July 2012
 - (C) Reply: 11 July 2012
 - (D) Article 39(a): 18-20 July 2012
- (9) **Compel Experts**
 - (A) Filing: 22 June 2012
 - (B) Response: 6 July 2012
 - (C) Reply: 11 July 2012
 - (D) Article 39(a): 18-20 July 2012
- (10) **Compel Witnesses**
 - (A) Filing: 22 June 2012
 - (B) Response: 6 July 2012
 - (C) Reply: 11 July 2012
 - (D) Article 39(a): 18-20 July 2012

¹ Since these instructions depend on the outcome of the motions to dismiss in Phase 2, the United States recommends scheduling this motion during Phase 3.

(11) Defense Notice of Intent to Disclose Classified Information under MRE 505(h)(1) (For Discovery Received)

(A) Filing: 22 June 2012²

(12) Article 13

(A) Filing: 15 June 2012³

(B) Response: 6 July 2012

(C) Reply: 11 July 2012

(D) Article 39(a): 18-20 July 2012

(13) Speedy Trial, including Article 10

(A) Filing: 15 June 2012⁴

(B) Response: 6 July 2012

(C) Reply: 11 July 2012

(D) Article 39(a): 18-20 July 2012

(14) Defense Notice of Plea/Forum

(A) Filing: 20 July 2012

e. Phase 4. Evidentiary Issues Involving Both Unclassified and Classified Information under MRE 505 (3 August 2012 – 4 September 2012)⁵

(1) Motions *in Limine* (Classified Information not Previously Disclosed)

(A) Filing: 3 August 2012

(B) Response: 17 August 2012

(C) Reply: 22 August 2012

(D) Article 39(a): 29-31 August 2012

(2) Motions to Suppress (Classified Information not Previously Disclosed)

(A) Filing: 3 August 2012

(B) Response: 17 August 2012

(C) Reply: 22 August 2012

(D) Article 39(a): 29-31 August 2012

² The defense should provide notice under MRE 505(h) when it files its witness list, so that the United States may start evaluating the list and more efficiently process the request through relevant Original Classification Authorities. If the privilege is required to be invoked, then this will provide the United States sufficient time to complete the necessary classification reviews, prior to Phase 4.

³ The filing date of one week earlier for the defense motions is in accordance with their schedule to give the United States the necessary time to respond.

⁴ The filing date of one week earlier for the defense motions is in accordance with their schedule to give the United States the necessary time to respond.

⁵ This process will likely require the military judge to review classified information within a special facility or under special handling procedures. Additionally, this process will likely take some time for the military judge to make her rulings on all classified information evidentiary motions.

- (3) **Pre-Qualify Experts**
 - (A) Filing: 3 August 2012
 - (B) Response: 17 August 2012
 - (C) Reply: 22 August 2012
 - (D) Article 39(a): 29-30 August 2012

- (4) **Litigation Concerning MRE 505(h) and MRE 505(i)**⁶
 - (A) Filing: 3 August 2012
 - (B) Response: 17 August 2012
 - (C) Reply: 22 August 2012
 - (D) Article 39(a): 29-31 August 2012

(5) Production of Compelled Discovery for Defense Motion to Compel Discovery #2 or Production of Limited Discovery under MRE 505(g)(2) or (3) or Notification to Court of Claim of Privilege under MRE 505(c)

- (A) Date: 17 August 2012

(6) Production of Compelled Discovery for Government Motion to Compel Discovery

- (A) Date: 3 August 2012

(7) Defense Additional Witness List in light of Information in Defense Motion to Compel Discovery. Defense Notice of Intent to Disclose Classified Information under MRE 505(h) from Compelled Discovery #2.

- (A) Date: 22 August 2012

(8) Proposed Questionnaires

- (A) Filing: 3 August 2012
- (B) Response: 17 August 2012
- (C) Reply: 22 August 2012
- (D) Article 39(a): 29-31 August 2012 (Questionnaires to members upon approval)
- (E) Completed Questionnaire Due Date: 14 September 2012.

f. Phase 5. Miscellaneous Motions (1 September 2012 – 21 September 2012)

(1) Any Additional Motion that does not have an Identified Deadline

- (A) Filing: 7 September 2012
- (B) Response: 14 September 2012
- (C) Article 39(a): 20 September 2012

(2) Grunden Hearing for all Classified Information

- (A) Filing: 7 September 2012
- (B) Response: 14 September 2012

⁶ Government advised the Court will need 15 duty days to review discoverable material.

(C) Article 39(a): 21 September 2012

(2) **Voir Dire Questions, Flyer, Findings/Sentence Worksheet**

(A) Filing for Court Review: 14 September 2012

(B) Article 39(a): 20 September 2012

h. **Phase 6. Trial by Members (20 September 2012 – 12 October 2012)**

(1) Article 39(a) Voir Dire – 20 September 2012

(2) Voir Dire: 21 September 2012

(3) Trial: 24 September 2012 – 12 October 2012